

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MELVIN BARHITE,

Plaintiff,

Case No. 12-cv-13722

District Judge Gershwin A. Drain

v.

DAVE SUMNER, *et al.*,

Defendants.

**ORDER ACCEPTING REPORTS AND RECOMMENDATIONS [#25] [#26] GRANTING
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT [#14], DENYING
PLAINTIFF'S MOTION FOR IMMEDIATE INJUNCTIVE RELIEF [#16] AND
DISMISSING ACTION**

On August 22, 2012, Plaintiff Melvin Barhite, a prisoner in the custody of the Michigan Department of Corrections filed a *pro se* civil rights complaint under 42 U.S.C. § 1983. On November 27, 2012, the Court referred this matter to Magistrate Judge R. Steven Whalen for a Report and Recommendation (“R&R”) on all dispositive matters. *See* Dkt. #12. Defendants filed a Motion for Summary Judgment on December 27, 2012. *See* Dkt. #14. Plaintiff filed a Motion for Immediate Injunctive Relief on January 7, 2013. *See* Dkt. #16. Magistrate Judge Whalen wrote R&Rs for the Motion for Summary Judgment [#25] and the Motion for Immediate Injunctive Relief [#26].

Pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.1(d)(2) of this Court, Plaintiff had fourteen days to file Objections to the R&Rs, which meant his Objections were due on

approximately September 6, 2013. Failure to file Objections would constitute Plaintiff's waiver of those issues for appeal. *Thomas v. Arn*, 474 U.S. 140 (1985).

However, Plaintiff's status as a prisoner made this timeline difficult. In an effort to accommodate Plaintiff, the Court granted Plaintiff's Motion for Extension of Time to File Objections to the R&Rs.¹ See Dkt. #30. This Court's Order gave Plaintiff forty-five additional days to file Objections, making his filing date October 20, 2013. *Id.* Later, it came to the Court's attention that the Plaintiff was moved to a different facility, and may not have received a copy of this Court's Order granting him an extension of time to file Objections. Upon realization of Plaintiff's transfer, the Court amended its Order to accommodate Plaintiff once more, giving him until November 25, 2013 to file Objections. See Dkt. #32. To date, Plaintiff has failed to file any Objections. The Court has given Plaintiff two extensions of time to file Objections to Magistrate Judge Whalen's R&Rs. Moreover, the Court's second extension was without a request from Plaintiff. The Court can no longer make accommodations for Plaintiff. Plaintiff's Objections are untimely. Therefore, he has waived his right to appeal.

Upon review of the parties' submissions and Magistrate Judge Whalen's R&Rs, the Court agrees with Magistrate Judge Whalen's conclusions that the Defendants' actions do not rise to the level of an Eighth Amendment violation and Plaintiff's likelihood of success on the merits is low. Therefore, the Court ADOPTS Magistrate Whalen's R&Rs [#25 and #26] as this Court's factual findings and conclusions of law. Defendants' Motion for Summary Judgment [#14] is GRANTED, Plaintiff's Motion for Immediate Injunctive Relief [#16] is DENIED. This cause of action is dismissed.

¹ Plaintiff titled his Motions as Extensions of Time to Answer Denials, however, the Court viewed these as extensions of time to file Objections to the R&Rs after considering the substance of the motions.

SO ORDER

Dated: December 11, 2013

/s/Gershwin A Drain

Gershwin a. Drain

United States District Court Judge